



DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

MEMORANDUM

DATE: November 30, 2004

TO: Land Reclamation Commission

FROM: Mike Larsen, Chief; Non-Coal Unit (*original signed by Mike Larsen*)

SUBJECT: Orders of Rulemaking, Industrial Minerals Rule Amendments

The following proposed rule amendments were published in the September 1, 2004 edition of the *Missouri Register*. A formal hearing was held before the commission on November 17, 2004. The public comment period expired on November 24, 2004.

The following is a listing of the rules being amended.

10 CSR 40-10.020 Permit Application Requirements
10 CSR 40-10.030 Bonding
10 CSR 40-10.040 Permit Review Process
10 CSR 40-10.050 Performance Requirements
10 CSR 40-10.060 Inspection Authority and Right of Entry
10 CSR 40-10.070 Enforcement
10 CSR 40-10.080 Public Meetings, Hearings and Informal Conferences
10 CSR 40-10.100 Definitions

We anticipate processing the Orders of Rulemaking according to the following schedule:

Adoption of Orders of Rulemaking by Commission	12/17/2004
File Orders of Rulemaking with the Joint Committee on Administrative Rules	1/24/2005
File Orders of Rulemaking with Secretary of State	2/23/2005
Orders of Rulemaking published in <i>Missouri Register</i>	3/01/2005
Publication in the Code of State Regulations	4/01/2005
Rules become final	5/01/2005

Integrity and excellence in all we do

The program did receive three comment letters during the public comment period. The commission heard these comments expressed during the public hearing before the commission on November 17, 2004. The commission directed the staff to make changes to the rules at 10 CSR 40-10.020 and 10 CSR 40-10.080 in response to the comments received. Those changes have been made and are incorporated into the Orders of Rulemaking for those rules.

RECOMMENDATION

It is the staff's recommendation that the Land Reclamation Commission formally adopt the Orders of Rulemaking.

Attachments

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.020 is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1303-1304). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held on November 17, 2004 and the public comment period ended on November 24, 2004. Two written comments were received addressing the proposed amendment. Because the two comments were identical in nature, they are addressed as one.

COMMENT: Two commentors expressed their opinion that the language of the proposed rule was inconsistent with the statutory language with respect to both mapping requirements for adjacent and contiguous landowners and public notification requirements to adjacent or contiguous landowners. Specifically, the commentors stated the proposed amendment required maps to include the names of all record landowners of real property located contiguous or adjacent to **the property line of the property where** the proposed mine plan area **is located** and that public notice be individually provided to these same landowners. Both commentors felt this language (noted in bold text) exceeded the statutory language and would prove overly burdensome on applicants for mining permits.

RESPONSE AND EXPLANATION OF CHANGE: The Land Reclamation Commission has reviewed these comments both in writing and at the public hearing and has decided to revise the rule to reflect the exact language of the statute. Specifically, the commission decided to delete the bolded language above from the proposed amendment. The language below reflects the commission's decision on these two subsections of the rule.

10CSR40-10.020 Permit Application Requirements

(2)(E)2.A. The names of any persons or businesses having any surface or subsurface interest in the lands to be mined, including owners or leaseholders of the land and utilities as well as the names of all record landowners of real property located contiguous or adjacent to the proposed mine plan area.

(2)(I)1.B. the last known addresses of all record landowners of contiguous real property or real property located adjacent to the proposed mine plan area.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.030 Bonding is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1304-1305). No changes have been made in the text of the proposed amendment so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.040 Permit Review Process is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1307-1308). No changes have been made in the text of the proposed amendment so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.050 Performance Requirements is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1306-1307). No changes have been made in the text of the proposed amendment so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.060 Inspection Authority and Right of Entry is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1307-1308). No changes have been made in the text of the proposed amendment so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.070 Enforcement is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1308-1311). No changes have been made in the text of the proposed amendment so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.080 is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1311-1313). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held on November 17, 2004 and the public comment period ended on November 24, 2004. One written comment was received addressing the proposed amendment.

COMMENT: One commenter suggested that language be added with respect to a petitioner's right to request a hearing after being notified that a public meeting has been declined by a permit applicant. The comment suggested that a fifteen day time frame be added to the proposed rule for a petitioner to request such a hearing. Within the same comment, it was noted that a typographical error exists in the rule as proposed and suggested correction of the error.

RESPONSE AND EXPLANATION OF CHANGE: The Land Reclamation Commission has reviewed this comment both in writing and at the public hearing and has decided to revise the rule to incorporate the fifteen day timeframe and to correct the typographical error. The language below reflects the commission's decision on this subsection of the rule.

10CSR40-10.080 Public Meetings, Hearings and Informal Conferences

(1)(A) If the recommendation of the director is for issuance of the permit, and a petition has been filed by an aforementioned person or persons prior to the termination of the public notice timeframe, the director shall, within thirty (30) days after the timeframe for such request has passed, order that a public meeting be held provided that the applicant agrees. If the applicant does not agree to the public meeting then the petition may be referred to the commission for a formal public hearing as directed by subsection (3)(B) of this section if the petitioner makes a written request within fifteen (15) days of notification of the denial of the public meeting by the applicant.

Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.100 Definitions is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2004 (29 MoReg 1313-1314). No changes have been made in the text of the proposed amendment so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.